

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District District of Nebraska
Name of Movant Khalat Alama	Prisoner No. 19253-047	Docket No. 4:05-CR-030 19-RGK-DLP-2
Place of Confinement Federal Correctional Institution, Greenville, Illinois <div style="text-align: right; font-size: small;">(include name upon which convicted)</div>		
UNITED STATES OF AMERICA v. Khalat Jamalthaeal Alama <div style="text-align: right; font-size: small;">(full name of movant)</div>		
MOTION		
1. Name and location of court which entered the judgment of conviction under attack _____ United States District Court, District of Nebraska, Lincoln, Nebraska		
2. Date of judgment of conviction April 13, 2006		
3. Length of sentence One hundred eighty eight (188) months.		
4. Nature of offense involved (all counts) Conspiracy to distribute and possess with intent to distribute methamphetamine.		
5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/> If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____ _____ _____		
6. Kind of trial: (Check one) (a) Jury <input checked="" type="checkbox"/> (b) Judge only <input type="checkbox"/>		
7. Did you testify at the trial? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

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U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
2008 MAY -9 PM 12:55
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9. If you did appeal, answer the following:

- (a) Name of court United States Court of Appeals for the Eighth Circuit
(b) Result Judgment of District Court affirmed
(c) Date of result May 23, 2007

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court United States District Court, District of Nebraska
(2) Nature of proceeding A handwritten letter from Petitioner was construed as a motion by the trial court.
(3) Grounds raised Ineffective assistance of trial counsel.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Denied

(6) Date of result May 18, 2006

(b) As to any second petition, application or motion give the same information: N/A

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information: N/A

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of Result _____

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☐

(3) Third petition, etc. Yes ☐ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

This process provides the exclusive remedy for raising grounds
related to ineffective assistance of counsel.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective assistance of trial counsel.

Supporting FACTS (tell your story *briefly* without citing cases or law): Petitioner was
initially arrested for the underlying offense on February 25,
2005. According to a one count indictment, Petitioner was
charged with conspiracy to distribute and possess with intent
to distribute methamphetamine from June 1, 2003 to January 11,
2005. - See Supplement Pages -

B. Ground two: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

12.A. Supporting Facts (continued)

Petitioner was released after posting bail on March 2, 2005. Shortly thereafter, an arrest warrant was issued for violating condition(s) of his release and Petitioner was arrested at the home of his girlfriend's aunt, Jane Snelling, on March 17, 2005.

When police arrived to execute the arrest warrant that had been issued against Petitioner, several people exited the home of Ms. Snelling while Petitioner remained inside initially to contact his attorney by telephone. When the guests told police that Petitioner was inside the house, police requested permission to search the dwelling for him. Ms. Snelling granted permission to search her home for Petitioner but he came out of the house before police entered.

After Petitioner was taken into custody and removed from the premises, police conducted a search of the Snelling residence without asking further permission or providing any reason for doing so. Police reportedly found a small amount of methamphetamine and other drug paraphernalia in common areas of the house.

It should be noted that no item seized by police contained specific markings which could positively identify such item(s) as belonging to Petitioner. In fact, police never asked the visitors found in the home who the drugs belonged to whatsoever. At sentencing, the trial judge stated his concern that other drug users had access to the area where the drugs were found.

Although the drugs seized by police were never charged against Petitioner, or directly connected to him, the drugs were admitted as evidence of an unrelated conspiracy charge against Petitioner without opposition from defense counsel. After two separate trials for the drug conspiracy, Petitioner was eventually found guilty of same.

Before trial, Petitioner told counsel that the drugs found in the Snelling home did not belong to him and the persons visiting the house could identify the responsible party. Petitioner further informed counsel that his girlfriend could impeach the allegations of a drug conspiracy being offered by government witnesses who were all seeking sentence reductions for felony convictions.

Instead of preparing a defense, counsel did not investigate the case or talk to any potential defensive witness whatsoever. Counsel became the government's best asset by telling Petitioner that he should take responsibility for the drugs found by police because the jury would believe the drugs belonged to Petitioner anyway. Counsel's predisposition can be found in opening statements from the first trial where counsel tells the jury that he expects Petitioner to take responsibility for the drugs found by police if Petitioner chooses to testify.

For the reasons outlined above, Petitioner asserts that trial counsel was ineffective for failing to investigate, call witnesses and challenge the admission of evidence from an unrelated crime which was not connected to Petitioner. As a result, Petitioner was convicted of the underlying offense through extreme prejudice without the opportunity for a fair trial.

D. Ground four: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea Michael D. Gooch, 1004 South 131th Avenue,
Omaha, NE. 68154

(c) At trial Same as 15.(b)

(d) At sentencing J. William Gallup, 1001 Farnam Street (3rd floor),
Omaha, NE. 68102

(e) On appeal Same as 15.(d)

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5-6-08
(date)

Mahat Alam
Signature of Movant

KHAJAT ALAMA *19253-047
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 5000
GREENVILLE, IL. 62246

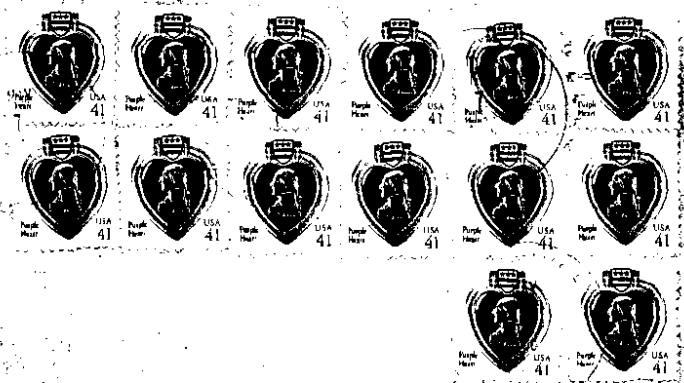
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U.S. DISTRICT COURT
LINCOLN

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